



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2004-9575

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213026.

The City of Austin (the "city") received a request for (1) all documents containing "the names of members of the Seaholm/Block 21 review committee," including the names of two outside consultants hired by the city, and (2) the contracts between these two consultants and the city. You claim that the requested information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that you have not submitted the requested contracts between the two Seaholm/Block 21 consultants and the city. *See* Gov't Code §§552.301(e). Furthermore, you have not indicated whether such contracts exist or if you wish to withhold any such information from disclosure. Therefore, to the extent that this information exists, we assume you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

In addition, we also note that although you claim that the requested information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code, you only provide arguments in support of your section 552.104 claim against disclosure. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Sections 552.107 and 552.111 are discretionary exceptions to disclosure that a governmental body may waive. *See* Open

Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 630 (1994) (section 552.107 is discretionary exception), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). Therefore, because you have not submitted any arguments in support of your claims under sections 552.107 and 552.111, we conclude that you have waived these exceptions. *See* Gov't Code §§ 552.301, .302. Accordingly, we will only address your section 552.104 claim against disclosure.

We now turn to your arguments regarding the submitted information. Section 552.104 of the Government Code excepts from disclosure information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989), 463 at 2 (1987).

You do not argue that release of the submitted information would give unfair advantage to a bidder and have not otherwise demonstrated that release of the submitted information would cause specific harm to the interests of the city in a particular competitive bidding situation. We therefore conclude that the submitted information may not be withheld under section 552.104 of the Government Code.

We note that the submitted information contains e-mail addresses that are confidential under section 552.137 of the Government Code.¹ Section 552.137 provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

¹ This office will raise a mandatory exception like section 552.137 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that the individuals whose personal e-mail addresses we have marked have affirmatively consented to the release of their e-mail addresses. Therefore, the city must withhold the marked e-mail addresses under section 552.137. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 213026

Enc. Submitted documents

c: Ms. Shonda Novak
Business Reporter/Real Estate
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(w/o enclosures)